

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RUBIN C. SLADE,

Petitioner,

v.

//

CIVIL ACTION NO. 2:16CV38
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING CASE AS MOOT

On May 9, 2016, the pro se petitioner, Rubin C. Slade ("Slade"), filed a motion to vacate pursuant to 28 U.S.C. §§ 2255, which the Court referred to United States Magistrate Judge Michael J. Aloï for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2.

On May 12, 2016, Magistrate Judge Aloï issued an R&R, in which he recommended that the Court dismiss Slade's petition as an improperly filed second or successive § 2255 petition (dkt. no. 4 at 4). The R&R correctly noted that Slade would need to file a petition pursuant to 28 U.S.C. § 2244(b)(3)(A) with the Fourth Circuit Court of Appeals before this Court could hear any such second or successive § 2255 petition. As Slade had not yet done so, the R&R correctly concluded that this Court lacked jurisdiction to hear his claim.

The R&R also specifically warned Slade that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 20. The parties did not file any objections.¹

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 4]

Subsequent to entry of the R&R, however, and during the pendency of this Court's review of it, Slade filed a petition pursuant to 28 U.S.C. § 2244(b) with the Fourth Circuit seeking approval to file a second or successive petition pursuant to 28 U.S.C. § 2255(h), which the Fourth Circuit granted. Contemporaneously, Slade filed a new pro se petition pursuant to 28 U.S.C. § 2255(h), which has been docketed by the Clerk at 2:16cv53. Accordingly, Slade's requested relief under Johnson will be addressed in the Court's review of his new petition.

Consequently, the Court **ORDERS** that this case be **DISMISSED AS MOOT** and stricken from the Court's active docket. Further, the Court orders the Clerk to terminate the R&R (dkt. no. 4) as moot.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: June 27, 2016.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).